

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CONSOLIDATED UNDER
CASE NO. 05-10155 PBS

YISEL DEAN, Independent Administratrix of the Estate of
STEVEN DEAN, deceased, and on behalf of all statutory
beneficiaries,
Plaintiff,

V.

DOCKET NO: 05cv10155 PBS

RAYTHEON COMPANY, a Delaware corporation,
RAYTHEON AIRCRAFT COMPANY, a Kansas Corporation,
RAYTHEON AIRCRAFT CREDIT CORPORATION, a
Kansas Corporation, COLGAN AIR, INC., a Virginia
Corporation d/b/a US Air
Express,
Defendants.

LISA A. WEILER, Administratrix of the Estate of SCOTT A. KNABE, deceased, and on behalf of all statutory beneficiaries,
Plaintiff,

V.

DOCKET NO: 05cv10364 PBS

RAYTHEON COMPANY, a Delaware corporation,
RAYTHEON AIRCRAFT COMPANY, a Kansas Corporation,
RAYTHEON AIRCRAFT CREDIT CORPORATION, a
Kansas Corporation, COLGAN AIR, INC., a Virginia
Corporation d/b/a US Air Express,
Defendants.

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION *IN LIMINE* TO EXCLUDE
DEFENDANTS' REFERENCE TO COMPARATIVE NEGLIGENCE**

NOW COME the defendants, and hereby respectfully request that this Court deny the Plaintiffs' Motion *in Limine* to Exclude Defendants' Reference to Comparative Negligence. As grounds therefore, the defendants state as follows:

Plaintiffs claim that because a finding of negligent design results in a finding of a breach of warranty, the defendants should be foreclosed from making any reference to comparative negligence at trial. Plaintiffs' argument is flawed in that it ignores the fundamental fact that plaintiffs have asserted a negligence claim against the defendants, against which the defendants are entitled to defend themselves by pointing to the comparative negligence of the pilots. Cigna Insurance Co. v. Oy Saunatec, Ltd., 241 F.3d 1, 17 (1st Cir. 2001); Correia v. Firestone Tire and Rubber Co., 388 Mass. 342, 355-56 (1986); Allen v. Chance Manufacturing Co., 398 Mass. 32, 34 (1986).

Certainly, if the plaintiffs are willing to dismiss their negligence claims against the defendants, the defendants will not agree not to raise the defense of comparative negligence. Until then, however, the plaintiffs have made the comparative negligence of the pilots a direct issue in the case by asserting negligence claims. The assertion of breach of warranty claims does not negate the defenses applicable to the plaintiffs' negligence claims.

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WHEREFORE, the Defendants respectfully request that this Court deny the Plaintiffs' Motion *in Limine* to Exclude Defendants' Reference to Comparative Negligence.

RAYTHEON DEFENDANTS,
By Counsel,

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on January 30, 2007.

/s/ Peter C. Knight

/s/ Peter C. Knight

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